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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,147	09/29/2003	James J. McGrath III	A-1583con	1917
33197 7590 03/08/2007 STOUT, UXA, BUYAN & MULLINS LLP 4 VENTURE, SUITE 300 IRVINE, CA 92618			EXAMINER NGUYEN, CHI Q	
			ART UNIT	PAPER NUMBER
			3635	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<p style="text-align: center;"><b>Office Action Summary</b></p>	<p><b>Application No.</b></p> <p>10/674,147</p>	<p><b>Applicant(s)</b></p> <p>MCGRATH, JAMES J.</p>	
	<p><b>Examiner</b></p> <p>Chi Q. Nguyen</p>	<p><b>Art Unit</b></p> <p>3635</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/12/2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6,8-12,21,22,26 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-12,21,22,26 and 28-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>Paper No(s)/Mail Date _____.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input checked="" type="checkbox"/> Other: <u>attachment</u>.</p> |
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### **DETAILED ACTION**

This Office action is in response to the applicant's amendment filed on 12/12/2006.

#### ***Status of claims***

Claims 2, 7, 13-20, 23-25, and 27 have been cancelled.

Claims 1, 3-6, 8-12, 21-22, 26, 28-30, and newly added claims 31-32 have been examined.

Upon further consideration, the previously stated allowable claims are withdrawn and rejections are following:

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,365,590 to Ruggieri et al.

Claims 32 and 9:

Ruggieri discloses an animal cage comprising an access panel including a door 26 and a frame 28 peripherally surrounding said door, said door being attached to said frame, a cage having side walls 20/22, a rear wall 24 and attached to said access panel frame, wherein said access panel is fire protection rated because it made out of sheet metal, e.g. stainless steel (see col. 3, line 59), a plurality of openings 42 (metal grill) for

Art Unit: 3635

ensuring fluid communication between an interior portion of the cage and surrounding space, a shelf 32 disposed in the interior portion of said cage (see Fig. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6, 21, 26, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,652,563 to Maus in view of US Pat. No. 5,522,344 to Demurjian.

Claims 1, 21, and 26:

Maus discloses a safety system enclosure comprising an access panel including a door 13 and a frame F (see attached of Fig. 6) peripherally surrounding said door, said door being attached to said frame, a cage or stall 10 having side and rear walls and attached to said access panel frame, wherein said access panel is fire protection rated (see col. 7, line 60). Maus does not teach expressly the cage having a plurality of opening for ensuring fluid communication between an interior portion of the cage and surrounding space. Demurjian teaches a cage 10 having a plurality of openings on side and end walls (see Fig. 1). At the time of the invention, it would have been obvious to a person having an ordinary skill in the art to modify Maus' cage for Demurjian's cage for having a plurality of openings for ventilation purposes thus preventing horses from suffocation. Maus in view of Demurjian teach the basic structures for the claimed

Art Unit: 3635

invention but do not teach the cage comprising expanded metal. However, this feature would have been considered a method of forming a device and is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Furthermore, applicant has not disclosed the criticality of this feature.

Claims 3-4, and 28-29:

And further comprising an environmental sensing device comprises a smoke detector 21 (Fig. 6).

Claims 5 and 30:

Wherein said sensing device comprises a heat sensor 22 (Fig. 6).

Claim 6:

Maus in view of Demurjian teach the basic structures for the enclosure as stated above but does not specifically disclose wherein the cage is welded to the frame of said access panel. However the limitation "welded" would have been considered as the method of forming a device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Claims 1, 8, 10, 21, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,365,590 to Ruggieri et al.

Claims 1, 8, 10, and 21:

Ruggieri discloses an animal cage comprising an access panel including a door 26 and a frame 28 peripherally surrounding said door, said door being attached to said frame, a cage having side walls 20/22, a rear wall 24 and attached to said access panel frame, wherein said access panel is fire protection rated because it made out of sheet

Art Unit: 3635

metal, e.g. stainless steel (see col. 3, line 59), a plurality of openings 42 (metal grill), outlet openings 36 for ensuring fluid communication between an interior portion of the cage and surrounding space, a shelf 32 disposed in the interior portion of said cage (see Fig. 1). Ruggieri teaches the basic structures for the claimed invention but do not teach the cage comprising expanded metal and welded to the frame. However, this feature would have been considered a method of forming a device and is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Furthermore, applicant has not disclosed the criticality of this feature.

## Claim 31:

Ruggieri discloses an animal cage comprising an access panel including a door 26 and a frame 28 peripherally surrounding said door, said door being attached to said frame, a cage having side walls 20/22, a rear wall 24 and attached to said access panel frame, wherein said access panel is fire protection rated because it made out of sheet metal, e.g. stainless steel (see col. 3, line 59), a plurality of openings 42 (metal grill) for ensuring fluid communication between an interior portion of the cage and surrounding space (Fig. 1). Ruggieri teaches the basic structures for the claimed invention but does not teach the cage is welded to said panel frame. However, this feature would have been considered a method of forming a device and is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Furthermore, applicant has not disclosed the criticality of this feature.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,365,590 to Ruggieri et al. and in view of US Pat. No. 5,010,845 to Azpurua et al.

Ruggieri discloses the basic structures for the claimed invention as stated but does not disclose at least one environmental sensing device disposed on said shelf or attached to an underneath surface of said shelf. Azpurua teaches an animal cage apparatus 11 including a thermometer 16 attached to the cage (see Fig. 3). At the time of the invention was made it would have been obvious to one of ordinary skill in the art to provide a thermometer or environmental sensing device disposed to the cage to ensure the cage should have a comfortable temperature for animals. Ruggieri in view of Azpurua teach the basic structures for claimed invention except for the sensing device disposed on the shelf or underneath surface of said shelf. It would have been obvious to one having ordinary skill in the art at the time the invention was made to dispose a sensing device on or underneath surface of the shelf, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. The motivation for doing so would have to get a comfortable environment for animals where they're normally stayed.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-6, 8-12, 21-22, 26, and 28-32 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Art Unit: 3635

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

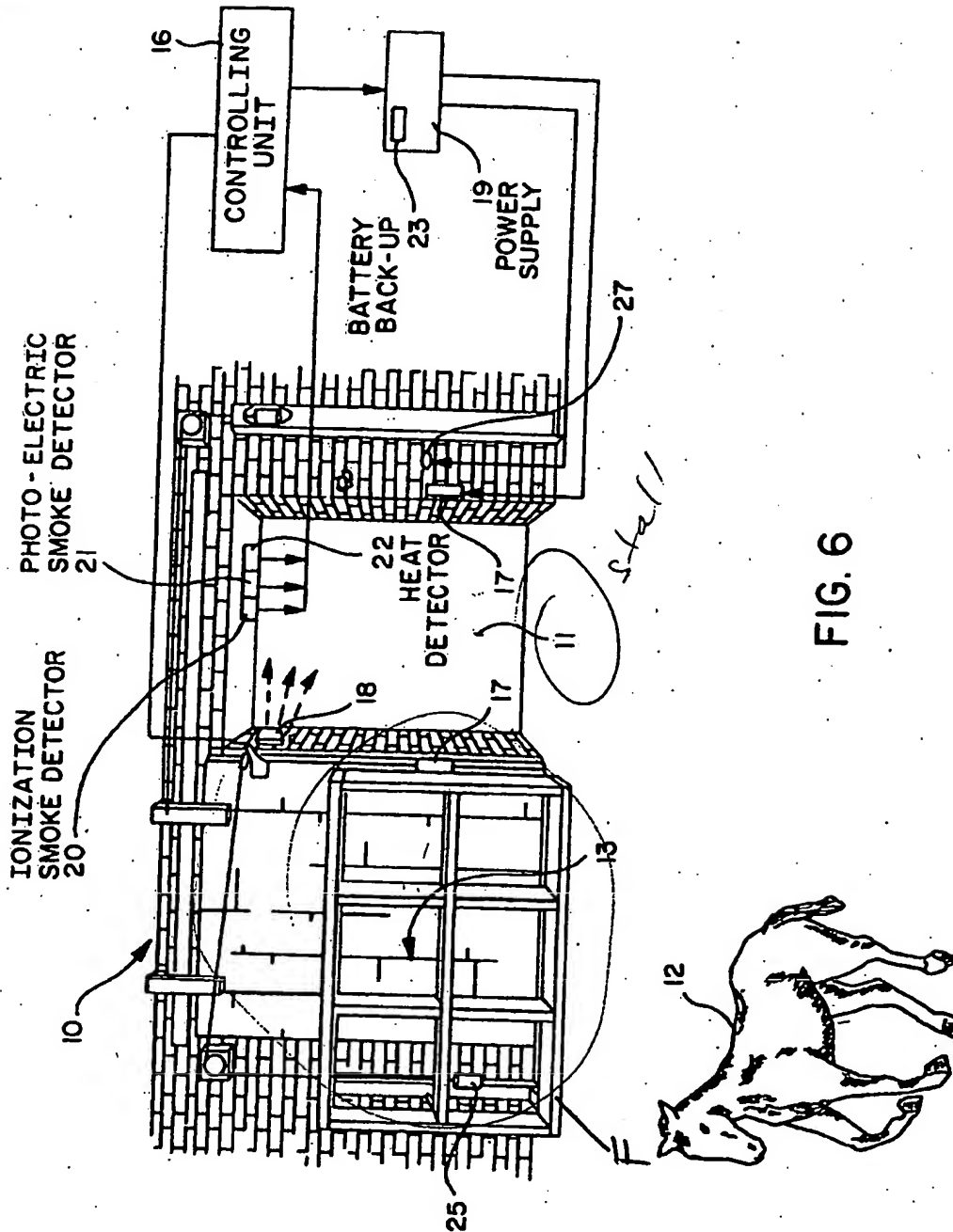
Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (571) 272-6842. The examiner's right fax number is (571) 273-6847.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

CQN  
3/2/2007

*Basil K. Krotz*  
BASIL KROTZ  
EXAMINER # 3635  
3/5/07





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